

REMARKS

The applicant respectfully requests reconsideration of claims 35-63 in view of the foregoing amendment, and consideration of new claims 64-70. The indication that claims 53-55 and 63 incorporate allowable subject matter is noted and appreciated.

A. Claims 35, 40-49, 56 and 58-60 stand rejected under the judicially created doctrine of obviousness-type double patenting, as allegedly unpatentable over claims 16-19, 21, and 23-32 of U.S. Patent No. 6,251,135.

In connection with this rejection, it is asserted that the conflicting claims of the application and the '135 patent are not patentably distinct from each other because the patented claims allegedly anticipate the claims subject to this rejection. The applicant, respectfully, does not acquiesce in this assertion. However, the term of a patent issued on this application would be set to end August 1, 2017, based on the priority date asserted. Accordingly, the filing of a terminal disclaimer is acceptable in light of its negligible impact on the patent term.

Accompanying this amendment is a copy of the terminal disclaimer, signed on behalf of the owner of U.S. Patent No. 6,251,135 and the present application. Accordingly, it is submitted that these claims no longer are subject to the double patenting rejection.

B. Claims 35-49, 50-52, 56-57 and 61-62 stand rejected under the judicially created doctrine of obviousness-type double patenting, as allegedly unpatentable over claims 34, 2, 6, 11 and 20-21 of U.S. Patent No. 6,340,367.

In connection with this rejection, it is asserted that the conflicting claims are not patentably distinct from each other because the patented claims are said to anticipate the claims subject to this rejection. The applicant, respectfully, does not acquiesce in that assertion. Nonetheless, the applicant agrees to submit the requested terminal disclaimer, in view of its negligible impact on the term of any patent issued on the present application.

Accompanying this amendment is a copy of the terminal disclaimer, signed on behalf of the owner of U.S. Patent No. 6,340,367 and the present application. Accordingly, it is submitted that these claims overcome the double patenting rejection.

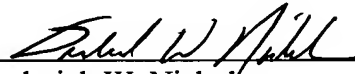
C. Claim 63 has been objected to as dependent on a rejected base claim. Claims 61 and 62 are subject to the double patenting rejection based on U.S. Patent No. 6,340,367. In view of the accompanying terminal disclaimer with respect to the '367 patent, it is submitted that claim 63, now dependent on an allowable claim, is in condition for allowance.

To summarize, it is submitted that claims 35-63 in view of the present amendment, and new claims 64-70, incorporate patentable subject matter. An early and favorable action allowing these claims is respectfully requested.

Respectfully submitted,

Boston Scientific Scimed, Inc.

Dated: August 15, 2003

By: 
Frederick W. Niebuhr
Registration No. 27,717
CUSTOMER NO. 23452

CERTIFICATE OF MAILING

Pursuant to 37 CFR 1.8, I hereby certify that this Amendment in Application Serial No. 10/008,716 is being deposited with the U.S. Postal Service by first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date of deposit indicated below.

Dated: August 15, 2003


GERALYN M. VITA

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